

JOHANNA WILLIAMS TINELLI	:	CIVIL ACTION
	:	
v.	:	
	:	
COMMERCIAL PLASTICS AND	:	
SUPPLY CORP./NYTEF PLASTICS	:	
LTD., et al.	:	NO. 98-5806

Title VII itself provides, in § 706(b), that

Charges shall not be made public by the Commission...Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned."

And § 709(e) makes it a criminal offense for any employee or officer of the Commission to make information public in violation of the statute.

Plaintiff asserts that the Commission has been provided with the written consents of both Ms. Rubin and the defendants, hence the Commission is legally authorized to make the requested disclosures. The Commission counters with the assertion that, when any complaint lodged with the Commission does not result in litigation, the record is permanently closed for all purposes; the persons who had been involved in the administrative proceeding are no longer "parties" to anything, but are treated precisely the same as any other member of the general public.

I note, however, that the statute does not refer to "parties," but authorizes disclosure with "the written consent of the persons concerned." It is reasonable to suppose that there may be "persons concerned" who are not, and never have been, "parties" in the strict sense. The question also arises, concerned with what? Persons concerned in the outcome of the administrative proceeding, persons concerned in the events leading up to the controversy, or persons concerned in the issues

which are under discussion?

The Commission apparently takes the position that, once the administrative file is closed without litigation, there is no longer anyone who can accurately be described as a "person concerned," whose consent to disclosure can be effectuated.

I hesitate to adopt such an extreme position, and need not do so in the present case. Under any view of the matter, I am not persuaded that Ms. Rubin and these defendants are the only persons whose consents to disclosure would be necessary in order to comply with the statute. Moreover, and perhaps more important, the purported consents are decidedly ambiguous. The written authorization of Ms. Rubin authorizes disclosure to either plaintiff's counsel or defense counsel in the present case. The authorization submitted on behalf of the defendants purports to authorize release to defense counsel only. Moreover, the defendants' authorization is not signed by any defendant, but is signed only by the attorney who represents them in the present case. Whether that same attorney was involved in the Rubin administrative proceeding does not appear, nor, indeed, is it self-evident that an attorney can waive the confidentiality rights of his clients.

Finally, it should be noted that plaintiff has not shown an actual need for the requested documents. Since Ms. Rubin is apparently cooperative, she is presumably in a position

to disclose what occurred before the EEOC. The same is true of the defendants.

The motion of the EEOC to quash the subpoena will be granted.

An Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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v.	:	
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ORDER

AND NOW, this day of October, 1999, IT IS ORDERED:

1. Plaintiff's Motion to Compel Inspection of Records from the EEOC is DENIED.
2. The EEOC's Motion to Quash Subpoena is GRANTED.

John P. Fullam, Sr. J.